

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
UPPER PENINSULA POWER COMPANY)	Case No. U-17895
for authority to increase retail electric rates.)	
_____)	

At the January 12, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On September 18, 2015, Upper Peninsula Power Company (UPPCo) filed an application, with supporting testimony and exhibits, for authority to increase its rates for retail electric service in the annual amount of \$6,681,312 if a requested deferral is granted, or \$13,155,928 if the deferral is not granted, based on a projected calendar 2016 test year.

A prehearing conference was held on October 28, 2015, before Administrative Law Judge Martin D. Snider (ALJ). The ALJ granted intervenor status to Calumet Electronics Corporation, the Association of Businesses Advocating Tariff Equity, Michigan Technological University, Citizens Against Rate Excess (CARE), White Pine Electric Power, LLC, and Verso Paper Corporation (Verso). The Commission Staff (Staff) also participated in the proceedings.

On September 8, 2016, the Commission issued an order authorizing UPPCo to implement rates that increase its annual electric revenues by \$4,647,975. (September 8 order). On

October 10, 2016, CARE filed a petition for rehearing of the September 8 order. On October 31, 2016, Verso, UPPCo, and the Staff filed their responses to the petition.

Mich Admin Code R 792.10437 (Rule 437) of the Commission's Rules of Practice and Procedure¹ provides:

A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts of circumstances arising subsequently to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon.

The Commission has often explained that:

A petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant rehearing.

See, e.g., October 14, 2004 order in Case No. U-13716.

In its petition for rehearing, CARE first requests that the Commission ignore its longstanding application of the rules concerning rehearing and adopt a standard that provides for reexamination of previously litigated issues. CARE argues that rules of statutory construction authorize the Commission to reconsider matters previously decided in the case in chief. CARE further claims that the Commission's interpretation of "rehearing" is an overbroad interpretation of Rule 437 and that the plain meaning of the word "rehearing" is contrary to the Commission's prohibition on rearguing issues.

¹ The Commission's standards concerning rehearing petitions can now be found in Rule 437, R 792.10437, which replaced but is identical to the former Rule 403 of the Commission Rules of Practice and Procedure.

UPPCo responds that the term “rehearing” is a technical word used within the practice of law. Thus, the plain meaning of the word is inapplicable. UPPCo points to Black’s Law Dictionary that defines rehearing as a “[s]econd consideration of cause for purpose of calling to court’s or administrative board’s attention any error, omission or oversight in first consideration.” Black’s Law Dictionary, 5th ed. 1979. UPPCo argues that the Commission’s application of the rules for rehearing is consistent with the more technical and more appropriate legal meaning.

The Staff also disagrees with CARE’s position and provides a cogent analysis of CARE’s misapplication of case law cited to support its position. Staff’s response, pp. 3-5. Thus, the Staff argues, CARE presents no new argument or evidence for rehearing and that the issues have already been rejected by the Commission. The Commission agrees.

It is well settled that the Commission will not grant rehearing so that a party may merely reargue a previously litigated position or to express disagreement with the underlying decision. CARE’s petition attempts to do both. CARE’s petition also requests relief that is beyond the scope of a rehearing.

CARE also argues that on pages 49-51 of the September 8 order the Commission failed to comply with provisions of MCL 24.285. More specifically, CARE argues that the Commission did not provide statutory support or fully discuss conflicting evidence relating to the calculation of the power supply cost recovery (PSCR) base rate and the PSCR line loss factor. The Commission disagrees and notes that it issued a reasoned opinion that properly analyzed the evidence and arguments of the parties regarding PSCR calculations. The fact that the Commission did not find compelling evidentiary support for CARE’s arguments related to including real time market pricing (RTMP) customers in PSCR calculations is not an adequate basis for granting rehearing.

CARE next requests that the Commission issue an order that clarifies: (1) its understanding of how MCL 460.6j(12), MCL 460.6k(3), and the order in Case No. U-7550 relate and apply to the determination of a PSCR base rate and a PSCR line loss factor in the general rate case, and (2) the discussion on the RTMP customers and rates, and how those relate to setting a PSCR base rate and a PSCR line loss factor. CARE's request for clarification on each issue, however, fails to constitute a proper demand on rehearing. Furthermore, the Commission finds that those issues were fully discussed in the September 8 order and that CARE simply wants to reargue its previous positions.

Further, CARE requests that the Commission adopt CARE's proposed \$59.42 per megawatt-hour (MWh) PSCR base rate and the 1.0439 line loss factor. CARE argues that its position is supported by the record as a whole. The Commission disagreed with that same position in its September 8 order and will not reconsider those same arguments on rehearing.

The September 8 order also rejected CARE's request that the Commission approve rates that result in the average cost for customers in each rate class to not exceed UPPCo's total average cost for all customers by more than 50% or not lower than 75% of UPPCo's total average cost. This issue also was fully addressed by the parties during the proceeding and properly analyzed and decided by the Commission in its September 8 order.

CARE next requests that the Commission clarify why and how the adoption of UPPCo's compromise position related to ratemaking treatment of pension expenses will affect recovery of future pension expenses. CARE, however, failed to lay any proper foundation for rehearing on the issue.

Finally, CARE requests rehearing to once again argue that the \$70 million accumulated deferred income tax (ADIT) balance should be added back to rate base because elimination of the

ADIT balance adversely affects ratepayers. CARE's position was addressed in the September 8 order and rejected. CARE's request is merely another attempt to reargue the same position.

The Commission finds that CARE has not properly substantiated its requests for rehearing on any of the issues presented.

THEREFORE, IT IS ORDERED that Citizens Against Rate Excess' petition for rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner
(Abstaining)

By its action of January 12, 2017.

Kavita Kale, Executive Secretary